

Skipping Unemployment Hearing in Alabama Not Necessarily a Safe Litigation Strategy

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A former employee who failed to appear for her unemployment benefits hearing, where the referee determined the employer had a legitimate reason for discharging her based solely on agency file documents, had her retaliatory discharge claim under the Family and Medical Leave Act (FMLA) dismissed when a district judge in Alabama held that the unemployment agency ruling blocked her suit and awarded summary judgment to her former employer, based on the “collateral estoppel” doctrine. *Franks v. Indian Rivers Mental Health Ctr.*, 2014 U.S. Dist. LEXIS 15544 (N.D. Ala. Feb. 7, 2014), *aff’d*, 2014 U.S. Dist. LEXIS 28005 (Mar. 5, 2014). This decision should have employers in Alabama taking a closer look at unemployment hearings.

Generally, collateral estoppel applies to bar an issue (e.g., the reason for an employee’s discharge) that has been litigated and decided by a valid and final judgment in an earlier proceeding from being re-litigated in a later one where the same parties are involved. The party who lost the issue in the first proceeding is bound by the determination in a subsequent legal proceeding. The Alabama Supreme Court has held that in order for collateral estoppel to apply to an issue raised in an administrative proceeding, the following elements must be present: (1) there is identity of the parties or their privies; (2) there is identity of issues; (3) the parties had an adequate opportunity to litigate the issues in the administrative proceeding; (4) the issues to be estopped were actually litigated and determined in the administrative proceeding; and (5) the findings on the issues to be estopped were necessary to the administrative decision. Rejecting the plaintiff’s arguments as to the third, fourth and fifth factors, Judge Sharon Blackburn ruled that collateral estoppel barred reconsideration of the reason for the former employee’s termination and dismissed her FMLA discharge claim.

Although the ruling in this particular case was to the benefit of the employer, under other circumstances, an employer too may find itself precluded from asserting that it had a legitimate, non-discriminatory or non-retaliatory reason for discharging the individual, depending on the testimony and documentation that is presented to the appeals referee and the ultimate wording of the referee’s determination. As a result, Alabama employers typically have elected to either participate in the unemployment hearing “full bore,” with all first-hand witnesses and documents queued up and ready to present, or have simply dropped their challenge to the benefits application and have not participated at all in the hearing — the latter of which, under a more traditional analysis, have prevented all of the necessary elements of the collateral estoppel doctrine from being met. However, Judge Blackburn’s decision creates a greater measure of risk. For example, if the company chooses not to attend the hearing but the former employee (in anticipation of eventually filing some form of discrimination or retaliation lawsuit) appears, and perhaps the referee takes testimony or accepts documents from the individual, the employer may find itself without a viable defense months (or years) later when the former employee’s claims reach the courts, depending on how the unemployment referee words his or her decision.

However, the law of collateral estoppel is unsettled; other Alabama federal judges in recent rulings suggest they would not extend the collateral estoppel doctrine as far as Judge Blackburn. Further, the Alabama Court of Civil Appeals recently ruled in a retaliatory discharge case that an unemployment hearing officer’s finding, that an

employee did not commit misconduct for purposes of the unemployment compensation statute, does not necessarily mean that the employee was not discharged for a valid reason under the employer's policies. Alabama is an at-will employment state, so an employee may be discharged for any lawful reason, even if that reason does not amount to misconduct as defined in the unemployment benefits context. Thus, the appellate court explained, an employer who lost before the unemployment officer is not necessarily collaterally estopped from asserting the employee was discharged for violating the employer's policies.

Moreover, collateral estoppel may be inapplicable under other statutory schemes (e.g., discrimination or retaliation claims investigated by the Equal Employment Opportunity Commission). Experienced counsel in Alabama should be consulted to determine the best course to take before making a final decision as to whether, and to what extent, the company intends to participate in an unemployment appeals referee's hearing. For further information, please contact David Wiley at WileyD@jacksonlewis.com, in our Birmingham office at (205) 332-3104, or the Jackson Lewis attorney with whom you regularly work.

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